STRAITS SETTLEMENTS REPORTS.

PUBLISHED BY AUTHORITY

[APPELLATE CIVIL JURISDICTION]
TERRELL, Ag. C.J., THOMAS, C.J. (F.M.S.) and HOWES, J.

July 16, 1937

MUNICIPAL COMMISSIONERS
v.
SYED ABDULRAHMAN BIN SHAIKH ALKAFF & ORS.

[SINGAPORE CIVIL APPEAL No. 2 of 1937]

Municipal Ordinance (Cap. 133) Ss. 58 (1) (j), 143 (1) (m), Municipal By-Law 121— power to make building by-laws—scope of powers—meaning of "erect" in Ordinance—Applicability of, to by-laws.

Under the Municipal Ordinance (Cap. 133) Section 58 (1) (j) power is conferred on the Municipal Commissioners to make by-laws for the regulation of buildings and building operations. By section 143 (m) it is provided that such power shall include power to make by-laws for "the construction and level of arcades or pavements for the use of foot passengers along that part of any building which abuts on a street." The Singapore Municipal Commissioners under those powers passed a by-law (By-Law 121) stipulating that any person "who shall erect a building which abuts on a street or road shall provide a verandah-way or an uncovered foot-way of the width of at least seven feet."

Held, by the Court of Appeal (Terrell, Ag. C.J. and Howes, J., Thomas, C.J. (F.M.S.) dissenting) that (1) the By-Law is *intra vires* if it is applied to a new building or to any building operation which involves the substantial reconstruction of an existing building.

(2) that the expression "erect a building" in the by-law should be given its ordinary meaning, that is, of erecting a new building or making a substantial reconstruction of an existing building.

(3) that the statutory definition of "erect" laid down by s.144 (10) of the Ordinance is confined to s.144 itself and not to any other part of the Ordinance or to the by-laws.

Decision of McElwaine, C.J., reported in (1937) 6 M.L.J. 111. *sub nomine, Syed Abdulrahman bin Shaikh Alkaff* v. *Municipal Commissioners*, reversed.

APPEAL from a judgment of McElwaine, C.J., dated March 31, 1937, discharging an order *nisi* calling upon the Municipal Commissioners of the Town of Singapore to show cause why a Writ of Mandamus should not issue directed to them, commanding them to consider in accordance with law and without reference to By-law No. 121 or to section 143 (1) (m) of the Municipal Ordinance whether or not they should approve the plans submitted by the appellants.

The facts leading up to the issue of the order *nisi* are sufficiently dealt with in the judgment of Howes, J. below.

Walters for the Appellants.

O'Connor for the Respondents.

Cur. Ad. Vult.

TERRELL, AG. C.J.—This is an appeal from the judgment of the Chief Justice discharging a rule *nisi* for a mandamus obtained by the relators Syed Abdulrahman bin Shaik Alkaff, and Syed Aboobaker bin Hussain Alkaff against the Municipal Commissioners of Singapore.

The facts of the case are sufficiently dealt with in the judgment of Howes J. which I have had the advantage of reading and it is not necessary for me to recapitulate them.

I agree with the learned Chief Justice that By-law 121 is *intra vires* if it is applied to a new building or to any building operation which involves in substance the reconstruction of an existing building. I also agree that the works contemplated by the relators brought them within the definition of persons "deemed to erect a building" within the meaning of section 144(10) of the Ordinance, and that accordingly they were under an obligation to submit specifications and plans (section 144 (1)). It is true that Mr. Walters argued that it was not really necessary for the relators to have submitted plans, but in fact they did so, and I doubt whether this argument was really open to the appellants.

The only real issue in this case is whether "erect a building" in By-law 121 should be given its ordinary meaning, that is of erecting a new building or making a substantial reconstruction of an existing building, or whether the expression should be given the extended meaning provided by section 144(10).

Although later I will deal with the history of the legislation so far as concerns the provision of arcades, the primary duty of the Court is to interpret the Ordinance and the By-laws made thereunder as it finds them, and it will be necessary to refer shortly to the sections which are applicable.

A general and very wide power to make By-laws is conferred by section 58, and section 143, which particularises certain matters in respect of which building by-laws may be made, does not restrict the generality of the powers given by section 58.

Section 144 provides for the submission of plans and specifications by any person intending to erect or re-erect a building. By section 144 (10) (h) a person shall be deemed to erect a building who carries but major repairs such as are contemplated by the relators. Section 144(1) further says that the plans and specifications shall be prepared "in accordance with this Ordinance and the Building By-laws."

Section 144(2) provides that the Commissioners *may* give directions with regard to certain matters including (subsection (a)) "compliance with this Ordinance and the Building by-laws."

Building by-law 121 commences:

> "every person who shall erect a building which abuts on any street or road *shall* provide a verandah way or an uncovered footway etc."

Now the main argument of the appellant was that, if by-law 121 is given the extended meaning for which the respondents contend, it is unreasonable and *ultra vires*. It is claimed that the by-law is unreasonable on two grounds:

(a) it purports to deprive property owners of their land without compensation and

(b) If it applies it is obligatory, the Commissioners having no right of waiver.

In answer to (a) the respondents argue that a by-law is not necessarily unreasonable because it deprives people of their property without compensation, and they relied on *Onions* v. *Clarke*, 116 L.T. p.335 and *Slattery* v. *Naylor*, (1913) A.C. p.446.

In answer to (b) the respondents submitted that the Commissioners had a right of waiver, and that in considering whether or not a by-law is reasonable, the Court will always assume that the by-law of a public representative body will be reasonably administered. *Kruse* v. *Johnson*, (1898) 2 Q.B. at p.99.

I fully accept submission (a) with a proviso, that if persons are to be deprived of their property without compensation the statute or regulations must so provide in clear and unequivocal terms. "It is a proper rule of construction not to construe an act of Parliament as interfering with or injuring persons' rights without compensation unless one is obliged so to construe it." (*per* Brett M.R. in *Attorney-General* v. *Horner*, 14 Q.B.D., p.257). The same principle applies equally to the construction of By-laws made in pursuance of a statute.

As regards (b) the whole argument depends on whether in fact the Commissioners have a right of waiver or not. If they have such a right. I agree that the Court should assume that the By-law will be reasonably administered.

Now I have referred to the relevant portions of section 144 and of By-law 121, and though it would appear that the Commissioners have a discretion as to the directions which they can give under section 144(2), no such discretion is contemplated by section 144(1). The subsection says that plans *shall* be submitted in accordance with the By-law, and By-law 121 insists on the provision of a verandah way. The Commissioners therefore have no power to accept a plan which does not comply with the By-laws.

It is perfectly clear that a local authority cannot waive its By-laws unless the by-laws themselves give the local authority dispensing power or discretion (See *Lumley's* Public Health, 10th edition p.459 and the cases there cited). It was accordingly argued that the Commissioners had such a right of waiver by virtue of By-law 2 which reads:

2. The following buildings shall be exempt from the operation of these By-laws:—

(a) Any building in His Majesty's possession or employed or intended to be employed for His Majesty's use or service whether for Imperial purposes or for the use of the Government of the Colony.

(b) Any building which may be exempted by special permission of the Commissioners.

(c) Any building erected or intended to be erected for use solely as a temporary hospital for the reception and treatment of persons suffering from any dangerous infectious disorder.

I do not think that this By-law has the effect of giving a right of waiver. There is a power to exempt a building by clause (b) and this power must be read as *ejusdem generis* with the exemptions under (a) and (c). It is obviously a power to exempt a particular building because it is a building of a certain class or character. It certainly does not give the Commissioners the right to waive some By-laws and enforce others.

The conclusion I come to therefore is that the by-law is *prima facie* obligatory upon any one submitting a plan and that the Commissioners having no discretion are not in a position to administer the By-law reasonably.

If that is the position, then I consider that By-law 121 is *prima facie* unreasonable. It may be perfectly reasonable to insist on a verandah way when a new building is being erected, but if the by-law is to be applied in every case where plans have to be submitted under section 144(1) it is not difficult to visualize cases of great hardships. This was fully appreciated by the learned Chief Justice who expressed regret that he felt bound to come to the conclusion that the By-law applied in every case.

It appears to me to be highly unreasonable that because an owner wishes to renew the outer wall of the 4th or 5th storey of a building, this should *ipso facto* involve him in the rebuilding of the ground floor so as to provide a verandah way. An even more extreme case was referred to at the Bar. It appeared that a lorry wrongfully ran into the outside wall of a house and knocked down a portion thereof, with the result that plans had to be submitted for the rebuilding, the building operations involved clearly falling within section 144(10) (h). The Commissioners, realising that in a case like that it would be unreasonable for the owner to have to provide a verandah way, purported to waive their insistence thereon. But in my opinion the Commissioners have no right of waiver, and accordingly it must follow that if the By-law applies in every case where a plan is submitted the By-law is unreasonable.

It does not however follow that the By-law is necessarily *ultra vires*. By-laws are to be construed 'benevolently' [*Kruse* v. *Johnson*, (1898) 2

Q.B., p.91 at p.99], and where a by-law is capable of two constructions one of which will make it valid and the other invalid, it ought to receive that interpretation which will support it (*per* Lord Wensleydale in *R.* v. *Saddlers Co.*, 32 L.J.Q.B. p.337). As in my opinion the By-law would be unreasonable if applied to major repairs such as are contemplated by the relators, I think it ought to be given the narrow construction, in which "erecting a building" is used in its ordinary and accepted sense.

Reference may also be made to sections 145 and 146 of the Ordinance. The sections deal with the provision of open spaces and back lanes. In these sections the provision of a back lane and an open space is made *prima facie* obligatory, but it was obviously considered by the legislature that a strict compliance with these provisions in every case might result in hardship. Accordingly we find that section 145 (2) gives the Commisioners a discretion, where ventilation is otherwise sufficiently provided for, and section 146(1) contains a proviso having a similar effect, with an appeal to the Governor-in-Council under section 146(4).

If the legislature contemplated that a verandah way should be provided in every case falling under section 144(10) one would have expected that the Commissioners would at least have been given a discretion. It is contrary to the spirit of the Ordinance that a provision of this kind should have the wide application contended for, and it is more consistent with the other provisions of the Ordinance that the operation of the By-law should be limited to cases where it will not work injustice and unnecessary hardship.

In support of this conclusion I can find no clear intention in the Ordinance that the definition in section 144(10) was intended to apply to By-law 121. On the other hand, there are various indications that it was not so intended to apply.

Generally speaking, words whether in a statute or in a By-law made thereunder are to be read in their ordinary and accepted sense. As Lord Hewart said in *Spillers Ltd.* v. *Cardiff (Borough) Assessment Committee*, (1931) 2 K.B. p.21 at p.43.

> "It ought to be the rule, and we are glad to think that it is the rule, that words are used in an Act of Parliament, correctly and exactly and not loosely and inexactly. Upon those who assert that that rule has been broken, the burden of establishing their proposition lies heavily. And they can discharge it only by pointing to something in the context which goes to show that the loose and inexact meaning must be preferred."

This passage was cited with approval by Lord Macmillan in giving the judgment of the Privy Council in *Mayor etc. of New Plymouth etc.* v. *Taranaki Electric-Power Board*, (1933) A.C. p.680.

The question then arises whether the Ordinance and By-laws are drawn in such a way as to compel the Court to give an interpretation to By-law 121 which would have the effect of making that By-law unreasonable and *ultra vires*.

Now it has been pointed out above that the section (No. 144) in which the definition is contained is not the By-law making section. By section 144(1) the By-laws are applied to the section, that is to say people have to conform to the by-laws when they are submitting plans, and presumably they only have to conform to such by-laws as are applicable since it is quite inconceivable that every by-law is relevant in the case of every plan. But the chief point is that the By-laws are in certain circumstances applied to persons submitting plans under section 144(1). The section itself is not applied to the By-laws. I mention this because the contrary was argued, on the ground that By-law 1 reads:

> "Under section 140 of Ordinance 135 (Municipal) (now section 144) every person intending to erect or re-erect any building shall submit to the Commissioners plans and specifications of the proposed building prepared in accordance with Ordinance No. 135 (Municipal) and these By-laws."

This is not really a by-law at all. It merely repeats and calls attention to the requirements of section 144(1) of the Ordinance. It cannot possibly have the effect of introducing a definition contained in section 144(10) into the By-laws themselves.

Again, it may be pointed out that By-laws 4 to 37 inclusive contain general definitions, applicable to all the By-laws, and there is no definition of 'erecting a building.'

The Ordinance itself also contains general definitions in section 3, and if the definition of 'erecting a building' appeared there, it would apply to the whole Ordinance and, by virtue of section 6 (c) of the Interpretation Ordinance, to the By-laws made thereunder. There is however no definition of "erecting a building" in the general definition section.

I think that it cannot be disputed that in many cases both in the Ordinance and in the By-laws the expression 'erecting a building' is used in its ordinary sense, and that the extended definition would be inapplicable.

I would refer in particular to sections 58(1) (h), 98(1) and 101(8) (b) of the Ordinance and By-laws 62, 63, 65, 80 and 141.

It seems to follow therefore that the definition in section 144(10) has only a limited application. It certainly applies to section 144 itself, but does it apply to anything else?

On an examination of the Ordinance it will be found that where there are definitions given otherwise than in the general definition section, the Ordinance is careful to say to what these definitions apply.

A few examples may be given. In section 147 there is a definition of what is deemed to be included in the expression 'domestic building,' but the section states that such definition is "for the purposes of sections 145 and 146."

Section 239 gives a definition of the term 'common lodging house' and is prefaced by the words "For the purpose of this Ordinance."

Section 276 which is the first section of Part XIII "Hackney carriages etc." commences:

> "In this part and in any rules or by-laws made thereunder unless there is something repugnant in the subject or context."

Then follows a list of definitions applicable to Part XIII.

It will be seen therefore that where further definitions are introduced in the course of the Ordinance, the extent to which they apply is expressly stated—they may apply to the whole Ordinance, or to particular sections or to a particular Part and the by-laws made thereunder.

Reference may also be made to section 159 of the English Public Health Act which defines what "shall be considered to be the erection of a new building." The section commences "For the purpose of this Act" and clearly shows the extent to which the definition applies.

But section 144 (10) of the Municipal Ordinance introduces a definition, and gives no indication whatever to what it applies.

Furthermore, the definition in section 144 (10) commences with the words "A person shall be deemed to erect a building who etc." That means that a person who has not "erected a building" in the ordinary and accepted meaning of those words, shall nevertheless be deemed to have done so, and as L. J. James said in *Gover's* case, 1 Ch. D. at p. 188: "Where the legislature provides that something is to be deemed other than it is, we must be careful to see within what bounds, and for what purpose it is to be deemed."

In the absence of any indication that the definition is to be extended to other sections of the Ordinance or to the By-laws, the only reasonable interpretation is that the definition does not extend beyond the section itself; that is to say that for the purpose of submitting plans and specifications, persons who are contemplating major repairs are deemed to be erecting a building. It is no doubt essential that in such cases the Commissioners should have notice of what alterations are to be carried out, but it is quite a different thing to argue that a person effecting repairs is erecting a building for every purpose whatever, when the Ordinance does not so provide.

Then again I find that the By-law itself contains a definition of 'street' which is to have "the same meaning as that expression has in the Ordinance." From the fact that 'street' *is* defined, and "erect a building" *not* defined, it may be inferred that the latter expression was intended to have its ordinary meaning and not the artificial meaning provided by section 144 (10).

In construing these sections therefor I find it impossible to hold that the definition in section 144 (10) was intended to apply to anything except the section itself. But when it is sought to import that section into a by-law which is really penal in its effect, I look in vain for the express and unmistakeable language which is always required, where it is claimed that a person can be deprived of his property without compensation.

In the very recent case of *Estate and Trust Agencies* (1927) *Ltd.* v. *The Singapore Improvement Trust* (reported in the Weekly Notes of June 12th 1937, page 253) the Privy Council held that many parts of the Singapore Improvement Trust Ordinance 1927, and in particular Part V, encroached on the rights of the subject, and must be strictly construed. Section 144 (1) of the Municipal Ordinance and By-law 121 also so encroach and must be interpreted in a similar manner.

I must now refer shortly to the argument based on the history of the legislation dealing with arcades. Mr. O'Connor for the respondent submitted that it had always been the policy of the Commissioners to insist on arcades, that they undoubtedly had the power so to insist before the amending Ordinance of 1907, and that it must be presumed that the provisions introduced in 1907 and subsequently re-enacted had the same effect as the previous provisions which had been repealed.

I do not think that this argument is tenable, but it will be necessary to examine the earlier legislation because the learned Chief Justice seems to have received the impression that there had been a uniform practice for 48 years to insist on provision of a verandah way (see p.63 of the Record). The statement may be correct so far as it concerns new buildings, but the right to insist on such verandah ways in a case such as the present could never have been claimed before 1913 when section 144 (10) (h), which included certain major repairs in the definition, was first introduced.

I have carefully examined all the relevant provisions of the earlier Ordinances, but as it would only cause confusion if I referred to the different sections in detail, I will content myself with summarising the general purport of the previous Ordinances, and pointing out the changes wrought by successive amendments.

The earliest Ordinance to which reference need be made is that of 1887. It was repealed and re-enacted in 1896.

The 1896 Ordinance contained a section No. 151 which is the forerunner of section 144, and provided that any person intending to erect or re-erect any building shall submit a plan. It then provided that such person shall obey the written directions of the Commissioners in respect of all or any of the following matters, namely:

"(a) the construction and level of an arcade or pavement for the use of foot passengers along that part of the building which abuts on a street."

Section 151 (5) gives a definition of "erecting a building" which is expressed to "include" various building operations, but not so as to include the major repairs which are now the subject matter of section 144 (10) (h).

Section 151 (6) provided for an appeal to the Governor-in-Council.

In 1900 an amending Ordinance extended the definition of erecting a building by including "the taking down of any building to the extent of one half thereof measured in cubic feet."

The general effect of these provisions, which continued in force until 1907, was as follows:—

(a) the definition of "erecting a building" only included what was in substance a rebuilding or reconstruction.
(b) The Commissioners could validly give directions for the construction of a verandah way, but their powers were discretionary and not obligatory, and
(c) If anyone was dissatisfied with the decision of the Commissioners, he could appeal to the Governor-in-Council.

So matters stood until the amending Ordinance of 1907 when the whole scheme was drastically altered—section 151 was repealed and two new sections were enacted in its place.

The new section 151 is the forerunner of our present section 143 and defines with particularity the matters upon which building by-laws may be made, with a proviso that the generality of the power to make by-laws should not be restricted thereby.

The substance of section 151 of the 1896 Ordinance was by the 1907 amending Ordinance contained in a section numbered 152. Section 152 (1) provides for the submission of plans and specifications by any one erecting or re-erecting a building, such plans and specifications to be prepared "in accordance with the provisions of this Ordinance and with the Building By-laws."

Section 152 (2) reads:

"The Commissioners may give written directions to the person submitting a plan and specification with regard to any of the following particulars:

(a) compliance with the provisions of the Ordinance and with the building by-laws."

The former subsection which gave the definition of "erecting a building" is also recast. The new section (section 152 (8)) commences:

"A person shall be deemed to erect a building." The definition is now on the same lines as section 144 (10) except that section 144 (10) (h) is not yet included.

Section 152 of the 1907 Ordinance contains no provision for an appeal to the Governor-in Council.

In pursuance of the powers given by the Ordinance Building By-laws were made by the Commissioners and gazetted on the 15th May 1908.

By-law 50 of the 1908 by-laws is the same as the present by-law 121 and makes it obligatory for every person who shall erect a building to provide a verandah way or uncovered footway. As in the present by-laws, there is no power to relax the operation of any particular by-law, unless a building is exempted altogether from the operation of the by-laws.

The changes brought about by the 1907 amending Ordinance may be summarised as follows:

(a) If a person "erects a building," within the wide meaning given by section 152 (8), it is obligatory that the plans and specifications should comply with the by-laws, and by-law 50 requiring the provisions of a verandah way is also obligatory.
(b) the matters about which the Commissioners may give directions no longer include specifically "the construction and level of arcades etc," but in lieu thereof they have the right to direct compliance with the by-laws, including presumably By-law 50.
(c) the definition of erecting a building uses the expression "deemed to erect a building"
(d) the right of appeal to the Governor-in-Council is taken away.

Although therefore the Commissioners appear to have a discretion with regard to the matters upon which they can give directions under section 152 (2), this discretion cannot be exercised in favour of a person who is "deemed to erect a building," so as to modify the strict application of By-law 50, as the plans must comply with by-law 50, and there is no power to relax the operation of the by-law. As the Commissioners themselves have no discretion to relax this or any other by-law, an appeal to the Governor-in-Council is no longer necessary.

With one important exception, the provisions of the 1907 Ordinance, and the by-laws made thereunder, are the same as they are today. The

exception was that introduced by the 1913 amending and consolidating Ordinance, when a new subsection was added to the definition of "a person who shall be deemed to erect a building."

The new subsection reads:

> " (h) renews or repairs any existing building in such a manner as to involve a renewal, reconstruction or re-erection of any portion of an outer or party wall to the extent of one storey in height whatever the material of such outer or party wall may be."

It was in compliance with this subsection that the appellants submitted plans and specifications.

It will be seen that it was only the introduction of the 1913 amendment which raised the question of the applicability of by-law 121. Previous to this extension of the definition the works contemplated by the old definitions involved a substantial rebuilding or reconstruction, which would in most cases fall within the compass of "erecting a building" in its ordinary meaning without having recourse to the extended definition.

Comparing the legislation of 1907 and the earlier legislation it is, I think, clear that under the earlier legislation the Commissioners could insist on the provisions of a verandah way, but:

(i) they could only do so if the 'erecting' was in substance a new building or reconstruction

(ii) even so they had a discretion whether to insist on a verandah way or not

and (iii) there was an appeal to the Governor-in-Council.

In 1907 the express power to give directions for the construction of a verandah way was deleted, and building by-laws were passed one of which made the provision of a verandah way obligatory in the case of any person erecting a building which abutted on a street. At the same time the definition of a person erecting a building was extended and such a person had to submit plans complying with the by-laws.

The discretion left to the Commissioners in giving directions became immaterial, because the plans must conform to the By-laws and there is no power to relax them. As the provision of a verandah way in the cases where the by-law applies is now obligatory, it can scarcely be argued that the new by-law necessarily had the same scope as the section which formerly gave the Commissioners a discretion. There is no reason why the By-law should not have been intended to apply only to buildings which were being 'erected' in the ordinary sense of the term. If that was so, there was no objection to extending the definition in 1913 so as to include certain repairs which merely involved the submission of plans, but there would be a strong objection if such repairs involved the owner in any case in the provision of a verandah way.

In the course of argument it appeared that the plans comprised some sunshades over the windows, in de Souza street which cannot in any case be approved. Mr. Walters stated that his clients were prepared to amend the plans by omitting the sunshades which are not permissible, and I think that the order should contain an undertaking to this effect.

In my opinion therefore the appeal should be allowed with costs here and below and the deposit should be repaid to the appellants or their solicitors.

The order, omitting formal parts, should run:

" and the appellants by their counsel undertaking to amend their plans so as to omit the provision of sunshades over any of the windows abutting de Souza Street, *It is ordered* that a writ of Mandamus should issue directed to the Municipal Commissioners of Singapore and commanding them to consider in accordance with law and without reference to Building By-Law 121 whether or not they should approve the plans submitted by the appellants in the name of their said firm of Alkaff & Company to the Commissioners in respect of proposed alterations to the premises known as Nos. 11 and 11A D'Almeida Street, Nos. 12 and 3 Collyer Quay and Nos. 8A, 8B, 8C, 8, 10A, 10B, 10C and 10 de Souza Street, Singapore, and which said plans were numbered on submission to the Commissioners for approval as plans Nos. 187/36."

THOMAS, C. J. (F.M.S.)—Under the Municipality Ordinance, Chapter 133 of the Revised Laws; provision is made for the administration of the Municipality of Singapore by Commissioners. Amongst other powers and duties conferred upon the Commissioners, they have the control of building operations. These are contained in Part VIII of the Ordinance which relates to streets, open spaces, and buildings. Buildings together with open spaces and back lanes are dealt with in sections 143 to 168.

Section 144(1) requires that every person intending to erect or re-erect any building shall submit to the Commissioners plans and specifications of the proposed building prepared in accordance with the Ordinance and the building by-laws. And sub-section 10 of section 144 states that:—

> "a person shall be deemed to erect a building who
>
> (b) adds or alters any existing building in such a manner as to involve
>
> (ii) new or partly new or increased superstructure on existing foundations
>
> (h) renews or repairs any existing building in such a manner as to involve a renewal, reconstruction or re-erection of any portion of an outer or party

wall to the extent of one storey in height whatever the material of such outer or party wall is."

The appellants are the owners of a building which they contemplated bringing up-to-date by making certain repairs and alterations especially to the front. They submitted a plan under section 144. This the Commissioners refused to pass mainly because it failed to comply with by-law 121 relating to verandahs.

The appellants have objected to this refusal of the Commissioners on various grounds. The first is that their proposed alterations did not amount to an erection coming within section 144. Apart from any admission resulting from the submission of a plan under s.144, the learned Chief Justice of the Straits Settlements has found that the proposed work did involve "erecting a building " within certain of the sub-paragraphs of section 144 viz: 10(b) (ii) and (h). After considering the extent of the proposed work it is in my opinion not possible to disagree with the finding of the learned Chief Justice. As a result of that finding it was incumbent on the appellants to submit a plan and specification of the proposed building prepared in accordance with the Ordinance and the building by-laws.

Now, very wide powers of making by-laws have been conferred upon the Commissioners by section 58. And also the powers of making by-laws have been amplified by section 143, which is the first section of that part of the Ordinance dealing with Buildings, Open Spaces and Back Lanes.

Under section 58(1) (j) power to make by-laws is given with respect to the regulation of buildings and building operations. And under section 143 power is given to make by-laws with respect to (m) the construction and level of arcades or pavements for the use of foot passengers along that part of any building which abuts on a street. The Commissioners made a number of by-laws under section 58 and under section 143. (these sections were formerly 57 and 139).

The first of these by-laws reads as follows:—

> Under section 140 of the Ordinance No. 135 (Municipal) every person intending to erect or re-erect any building shall submit to the Commissioners plans and specifications of the proposed building prepared in accordance with Ordinance No. 135 (Municipal) and these by-laws. (Section 140 is now S.144 and Ordinance No. 135 is now chapter 133).

By-law 121 is as follows:—

> Every person who shall erect a building which abuts on any street or road shall provide a verandah way or an uncovered footway of the width of at least seven feet measuring from the boundary of the street or road to the face of the wall of the building at ground level....

At the end of the by-law appears the following:— "The expression "street" shall have the same meaning as that expression has in Ordinance No. 135 (Municipal.')'

It has been urged that the by-law numbered 1 is not properly a by-law at all; since it merely repeats S.144(1) of Ordinance No. 133. The effect of it, however, is to apply specifically all the by-laws to section 144 and to remove any possibility of doubt as to the intention of the Commissioners. Therefore all the by-laws have been made under sections 58 and 143 in respect of section 144. The by-law uses the word "erect" and section 144 (10) states when a person is deemed to erect. But it has been argued that the special meaning given to the word "erect" can only be used for the purposes of the section itself and cannot be extended to anything beyond the section. In this connection *Gover's* case, (1875) 1 Ch.D. 182 has been cited. In the course of his judgment James L.J. said, "The Act says that an omission shall be deemed fraudulent. It provides that something which under the general law would not be fraudulent shall be deemed fraudulent; and we are dealing with a case of that kind. Where the Legislature provides that something is to be deemed other than it is, we must be careful to see within what bounds and for what purpose it is to be so deemed. Now the Act does not say that the prospectus shall be deemed fraudulent *simpliciter* but that it shall be deemed fraudulent on the part of the person wilfully making the omission as against a shareholder having no notice of the matter omitted; and I am of the opinion that the true intent and meaning of that provision is to give a personal remedy against the wrongdoer in favour of the shareholder."

In that case there was a limitation as to the fraudulent omission.

And in the present case there may be limitations but I can find none relating to the purpose of section 144 itself. Now section 159 of the English Public Health Act of 1875 provides as follows:—

> "For the purposes of this Act the conversion into a dwelling-house of any building not originally constructed for human habitation or the conversion into more than one dwelling-house of a building originally constructed as one dwelling-house only, shall be considered the erection of a new building."

It is noticeable that the word used is "considered" and not "deemed." But I can see very little distinction between the two words in the connection in which they are used.

Very little distinction seems to have been made when that section was considered in *Hanrahan* v. *Leigh-on-Sea Urban Council*, (1909) 1 K.B. 263, since whilst dealing with the section Walton J. remarks in his judgment,

> "It follows that the building which is converted must be deemed to be, and therefore becomes for the purposes of the Act, a new building, and the work of conversion is to be deemed to be the erection of the person converting it, of that new building."

The whole of the judgment of Walton J. seems to be very apposite to the present case. Bigham J. in the same case said:

> "In my opinion the Legislature intended that when a building which was not meant for a dwelling-house is altered so as to make it a dwelling-house, the building so converted is to be treated for the purposes of the Public Health Act 1875, as if it were a new building."

And so in the present case, I am satisfied that it was the intention of the Legislature that when a person repairs or alters a building to a certain extent or in a certain way, he is to be treated for the purposes of section 144 of Chapter 133 as erecting a building. It has been argued that the person shall only be deemed to erect for the purpose of submitting a plan and specification. If such were the case then no part of the plan or specification need be in accordance with the Ordinance or the building by-laws. In other words the plan and specification could show any kind of building anywhere without regard to the site or any adjoining building.

Now the words "plan and specification" are well understood as a representation, partly pictorial, of a proposed building operation. It can be read by experts like a printed page. In the plan and specification are incorporated the requirements of the law whether contained in an ordinance or in by-laws. And when a plan and specification are required to be submitted they must show that the law has been complied with. Section 144 specifically requires that the plan and specification shall comply with the ordinance and the by-laws. Therefore in my opinion in the present case it was necessary for the appellants to submit a plan and specification prepared in accordance with the Ordinance and the building by-laws. It has been argued that the use of the word "erect" in by-law 121 limits the requirements for the provision of a verandah to a person who erects and not to a person who is deemed to erect. By-laws are subject to the sections in respect of which they are made and not the sections to the by-laws. And the effect of by-law 1 is to apply by-law 121 as effectually to section 144 as if it had been made specifically under that section without regard to any other section.

It has also been argued that the by-law is invalid, and the chief ground for this objection is that it is not limited to section 144(1) but is extended to the whole of section 144. In view of what I have already said this objection cannot be maintained.

The by-law conforms with section 143 which specifically empowers the making of by-laws with regard to the construction of arcades. (See *Baker* v. *Mayor &c. of Portsmouth*, 3 Ex. Div. 157).

I have dealt with these matters at some length because they were those mainly argued in the course of the hearing of the appeal. With regard to the other points I so fully agree with the conclusions of the learned Chief Justice of the Straits Settlements (except with regard to one or two minor matters of no material importance which I do not deem it necessary to refer) that I see no object in going over the same ground again.

In my opinion this appeal should be dismissed with costs, the deposit in Court to be paid to the respondents or their advocate in respect of their taxed costs.

HOWES, J.—This is an appeal from the discharge of an order *nisi* calling upon the Municipal Commissioners of the Town of Singapore to show cause why a Writ of Mandamus should not issue directed to them, commanding them to consider in accordance with law and without reference to Building By-law No. 121 or to section 143 (1) (m) of the Municipal Ordinance whether or not they should approve the plans submitted by the appellants.

The facts which led up to the issue of the order *nisi* are shortly these:

The appellants are owners of a large number of houses in Singapore. In 1936 they submitted to the Municipal Commissioners plans of certain alterations which they desired to make to a building, fronting on De Souza Street, which with other buildings occupies an island site, surrounded by four roads. In consequence the area available for building is very restricted.

Other buildings on this site have been rebuilt at various times; and in the course of reconstruction, what is known as an "arcade" or "verandah way" has been made, to provide a covered footway for foot passengers. That is to say, the ground-floor wall of the buildings has been set back (in this case) seven feet; at intervals columns are built abutting on the roadway; and on these columns the front walls of the first and higher floors are carried. The first floor thus projects over the footway, and forms an arcade or verandah way.

The building which the appellants desire to alter has a verandah way where it abuts on Col-

lyer Quay and D'Almeida Street but in De Souza Street its front walls abut directly on to the road and there is no footway. The proposed alterations involve the enlargement of the ground floor windows, and the demolition of portions of the old wall between the main brick piers which carry the building. These walls have been referred to as "panels." They are lightly constructed, and do not carry the weight of the superstructure.

The plans of the proposed alterations were duly submitted to the Municipal Commissioners in accordance with section 144 (1) of the Municipal Ordinance, as it is clear that the alterations came within subsection (10) (h) of that section, which reads:—

> "A person shall be deemed to erect a building who.....
> (h) renews or repairs any existing building in such a manner as to involve a renewal, reconstruction or re-erection of any portion of an outer or party wall to the extent of one storey in height whatever the material of such outer or party wall is."

The Municipal Commissioners refused to pass the plans of the De Souza Street front, unless the appellants set back the ground-floor wall, so as to form a verandah way or arcade in the manner already described. The Commissioners also refused to sanction some projecting sunshades, made of concrete, on the upper storeys, which project over De Souza Street. The appellants admit that these proposed sunshades contravene the provisions of sections 114 and 115 of the Ordinance, and they agree to delete these from the plans; but state that this objection and ground for refusing to pass the plans was not raised until the matter was already before the Court below.

The Municipal Commissioners, in requiring the appellants to construct a verandah way, rely on By-law No. 121 of the Building By-laws, and it therefore becomes necessary to examine into that by-law and the sections of the Ordinance under which it was made.

The general power to make Municipal by-laws is contained in Part VI of the Municipal Ordinance (Cap. 133) headed "By-laws," beginning with section 58 (1), in which is set out a vast number of items which may be the subject matter of by-laws. Of these, item (j) is: "The regulation of buildings and building operations." This is followed by Part VII which deals with Rates and Taxes. Part VIII deals with Streets, Sewers and Buildings.

Under a sub-heading, "*Buildings, Open Spaces, and Back Lanes,*" is section 143, to which the side-note reads, "matters which may be regulated by building by-laws."

Section 143 (1) is an amplification of the general power already contained in section 58 (j) to make building by-laws, and sets out in detail a list of items connected with buildings and lettered (a) to (t), in respect of which by-laws may be made.

Amongst these items is: "(m) the construction and level of arcades or pavements for the use of foot passengers along that part of any building which abuts on a street."

Pursuant to the powers contained in sections 58 and 143, the Municipal Commissioners have made "Municipal By-laws with respect to Buildings."

These by-laws are published separately; and under section 58 (5) may be translated into Malay, Chinese and Tamil. They are obtainable, on payment of a sum not exceeding 25 cents, by "any applicant;" who would generally be some person contemplating erecting a building.

The building by-laws as published contain not only details of how buildings are to be constructed, but also the procedure to be followed when plans are submitted to the Commissioners for approval. By-laws 38 to 52 set out how the plans are to be prepared, and what they are to show. By-laws 53 to 60 set out the fees payable in connection with the submission of plans for approval. Under by-law 44 all plans are to be accompanied by a specification of all materials proposed to be used.

These by-laws cover every ordinary contingency arising out of the construction of a building.

By-law No. 1 is curious. It stands by itself, and is under no heading, except the general heading "Building By-laws," and is not in fact a by-law at all. It is a general statement, apparently for the information of the public, viz. "Under section 140 (now 144 (1)) of Ordinance No. 135 (Municipal) (now Cap. 133) every person intending to erect or re-erect any building shall submit to the Commissioners plans and specifications of the proposed building prepared in accordance with Ordinance No. 135 (Municipal) and these By-laws."

This is a reproduction of section 144 (1) of the present Ordinance (Cap. 133). In no sense can "By-law No. 1" be regarded as a by-law. It is merely an intimation to the person intending to build; who, on turning to By-law 38, under the heading "Submission of Plans," finds out exactly what he is required to do regarding the preparation of the plans and specifications which he proposes to submit for approval.

In addition to the published by-laws, the Municipal Commissioners have power, under section 144 (2), to give written directions to the person submitting a plan and specification, with regard to any of the various matters lettered (a) to (j) therein.

By subsection (3), the persons to whom written directions are given must amend the plan and specification accordingly. Presumably, the written directions which may be given under subsection (2), are to meet special cases in which the by-laws are not sufficiently wide to meet; and go to the extent of requiring a sufficient and pure water supply within a reasonable distance of the building; also for the supply of water and appliances for the extinguishment of fire.

There is nothing in subsection (2) to permit directions to be given for the building of an arcade or pavement.

The other subsections of section 144 are devoted to matters quite distinct from the actual construction of buildings, which are dealt with under the by-laws made under section 56 and elaborated in section 143. For instance, subsections (4) and (5) deal with buildings set forward or back, pursuant to written directions: subsection (6) requires notice of commencement or resumption of building operations to be given: subsection (7) deals with suspension of building operations: Subsection (8) is penal, and provides a penalty for failure to comply with the notice given under subsection (7), Subsection (9) provides a penalty for breach of subsection (6); for deviation from approved plans; for building in contravention of the Ordinance or any of the building by-laws; for failing to comply with any lawful order or written direction of the Commissioners.

Then comes subsection (10) to which so much argument in the appeal has been directed. "A person shall be deemed to erect a building who....." (then follows a list of works which constitute erecting a building).

In section 144, the only place where the expression "erect" a building occurs is in subsection (1) in which it is stated that "Every person intending to erect or re-erect any building shall submit to the Commissioners plans and specifications of the proposed building, prepared in accordance with this Ordinance and the building by-laws."

The object of subsection (10) is therefore to ensure that plans and specifications of proposed building operations, whether the same relate to a new building, or to alterations and additions to existing buildings (of the nature set out in subsection (10)) shall be submitted to the Commissioners before the work is started. Why subsection (10) was placed so far away from subsection (1) to which it obviously relates, is difficult to understand. The subsection does not require plans of minor repairs or internal alterations to be submitted. It is restricted to new buildings, and to alterations to existing buildings, of some magnitude.

The learned Chief Justice found as a fact, that the alterations in the building, the subject of this appeal, amounted to the erection of a building within subsection (10) and with that finding, this Court is in agreement.

The question is, does By-law No. 121 apply in a case such as this?

It becomes necessary, firstly, to consider what is the meaning of the expression "a person shall be *deemed to erect* a building" in subsection (10) of section 144.

The use of the word "deemed" in a statute was considered in *Gover's* Case, (1 Ch.D. at p.188). There, James L. J. stated "The Act says that an omission shall be deemed fraudulent. It provides that something which under the general law would not be fraudulent shall be deemed fraudulent; and we are dealing with a case of that kind. Where the Legislature provides that something is to be deemed other than it is, we must be careful to see within what bounds and for what purpose it is to be so deemed."

Clearly, the object of using the expression "deemed to erect" in subsection (10) was to give the words "erect a building" an extended and far more comprehensive meaning than they would otherwise possess. This is borne out by the list of works to buildings enumerated in paragraphs (b) to (h) of the subsection (which follow "(a) begins work on a new building") all of which relate not to the erection of a new building, but to alterations and additions to existing buildings.

To quote Lord Justice James *supra*, "we must be careful to see within what bounds and for what purpose it is to be so deemed." To my mind, the purpose (as I have already stated) was to prevent alterations to old buildings, as well as work on new buildings, being carried out without plans and specifications being first submitted to the Commissioners, as is required by subsecton (1) of section 144. This artificial meaning, attached to the word "erect," is bounded by section 144, and has no application to other sections of the Ordinance. Elsewhere in the Ordinance, the word "erect" is used in its ordinary and primary meaning.

Section 143, under which (together with section 58) the Building By-laws are made, does not use the word "erect" in the extended or artificial meaning attached to it by the words "deemed to" in section 144 (10).

Mr. O'Connor, for the respondents, has referred to the Interpretation Ordinance (Cap. 2) section 6 (c) which provides that where an Ordinance confers power to make regulations, expressions used in regulations (which include by-laws) shall, unless a contrary intention appears, have the same respective meanings as in the Ordinance conferring the power.

On this ground, he seeks to read into the words of By-law 121 "every person who shall *erect* a building which abuts on any street or road shall provide a verandahway or an uncovered

footway of the width of at least seven feet....." the extended meaning to the word "erect," given to it by section 144 (10). Had the by-law been made under section 144, or if the extended meaning given to the word "erect" in section 144 (10) had been included in the Interpretation section of the Municipal Ordinance, (section 3), I should agree; but as it was not, I have no reason for giving the word "erect" a meaning other than its ordinary meaning, viz. to put up a new building. It is significant that at the end of the by-law it is stated "The expression 'street' shall have the same meaning as that expression has in Ordinance No. 135 (Municipal)." Nothing would have been easier, had this been the intention, than to say that the expression "erect" has the meaning assigned to it by section 144 (10).

As it stands, By-law 121 is perfectly reasonable in the case of new buildings; but, as pointed out by Mr. Walters for the appellants, if the word "erect" had the extended meaning given to it in section 144 (10) it would lead to hardship and infringement of the rights of property owners.

I do not consider it necessary to deal with the history of the Municipal Ordinance or of the building by-laws, on which so much time was taken in the hearing of this appeal. Our duty is to interpret the law as in stands.

As to whether there was power in the Commissioners to make By-law 121 under section 143 (1) (m); in view of my finding, I do not consider it necessary to decide this point, but the words "*Construction* and levels of arcades" mentioned in (m) seem to me (coupled with the wide powers given to the Commissioners under the Ordinance) sufficient to justify the making of By-law 121. In the case of a new building, the construction of arcades is so general in Singapore, and is to the advantage of the building owner—if he does not put an arcade, he would have to set back the whole building (instead of only the ground-floor) to allow for a footpath—that the question is of little importance.

In my opinion, the appeal should be allowed with costs, here and in the court below and the Writ of Mandamus should issue directing the Municipal Commissioners to consider the plans as set out in the order of the High Court dated 16th November 1936, the relators agreeing that the sunshades shown on the plans shall be omitted. Deposit to be repaid to appellants' Solicitor.

Appeal allowed.

Solicitors for the Appellants—

Allen & Gledhill.

Solicitors for the Respondents—

Drew & Napier.

[ORIGINAL CIVIL JURISDICTION]

TERRELL, Ag. C.J.

August 16, 1937.

RE PAT A. BEINS.

[SINGAPORE BANKRUPTCY No. 275 of 1929].

Bankruptcy—application for discharge—certificate of number of creditors—delay in issue of—Official Assignee's report—delay in filing of—supplementary reports filed without leave of Court—investigation by Official Assignee of bankrupt's affairs—questions put by Official Assignee at his Office—scope of—public examination—necessity of re-opening—Bankruptcy Ordinance (Cap. 45) Ss. 17, 33, 69(2), 70; Bankruptcy Rules 194, 196, 272, 288; Courts Ordinance (Cap. 10) s.36; Evidence Ordinance (Cap. 13), s.3; Oaths Ordinance (Cap. 15), Ss.3, 4.

When a bankrupt, desirous of applying to the Court for his discharge, applies for a Certificate as to the number of his creditors under Rule 194 of the Bankruptcy Rules, to the Official Assignee, the latter cannot withhold or delay its issue. Nor can the Official Assignee delay filing the Report on the bankrupt's conduct and affairs prescribed by sect. 33(3), Bankruptcy Ordinance (Cap. 45), beyond the time prescribed by Rule 196(2), without applying for and obtaining, under Rule 288, an extension of time for doing so. Nor, finally, can the Official Assignee file, of his own initiative, further or "supplementary" Reports without similarly obtaining the leave of the Court.

The Official Assignee is not a judicial, but an executive, officer. He cannot administer oaths except for taking affidavits in verification of certain documents specified in sect. 69(2) of the Ordinance, and he cannot, like a Court, take the evidence of the bankrupt or cross-examine him within the precincts of the Bankruptcy Office, for the purpose of subsequently incorporating his answers in the Report to the Court required by sect. 33 (3) of the Ordinance. The Official Assignee may indeed question the bankrupt, without administering an oath, and the information so obtained or answers thus given, when read over, interpreted to. and signed by, the bankrupt, may be used as a basis for his Public Examination in Court under the supervision of the Judge, under sect. 17 of the Ordinance. Such Public Examination (if already closed when the new material comes to light which is sought to be availed of at the hearing of the application for discharge) must be formally re-opened for the purpose, under section 17(9) of the Ordinance.

A debtor, who was adjudicated bankrupt in July 1929, having informed the Official Assignee in 1936 that he wished to be discharged. was called upon to pay, $22 for "the expenses of his intended application for discharge." This sum having been duly paid on the 24th March 1936, the Official Assignee did not issue to the bankrupt the Certificate as to the number of his creditors prescribed by Rule 194, but entered him as No. 63 on a "waiting-list" of intending applicants for discharge. On the 13th May 1937. the bankrupt. through a Solicitor, formally renewed his request for the aforesaid Certificate: he was instead called upon to attend at the Bankruptcy Office, and was there sworn in, and cross-examined by the Assistant Official Assignee as to his conduct and affairs. The Certificate abovementioned was then issued on the 26th May 1937, after the conclusion of such cross-examination.

Held, the Official Assignee and his Assistant had in these respects acted illegally and violated Rule 194, and sect. 17 of the Ordinance.

The Registrar of the High Court, upon production of the said Certificate, fixed the 25th June 1937, for the hearing of the bankrupt's application for discharge. The